

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

| | | |
|------------------------|---|-------------------------------|
| NEXTGEAR CAPITAL, INC. |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | CIVIL ACTION NO. 1:21-cv-2352 |
| |) | |
| MOHAMED AHMED BIBAS, |) | |
| |) | |
| Defendant. |) | |

NOTICE OF REMOVAL

Defendant MOHAMED AHMED BIBAS (“Bibas”), respectfully removes this action from the Hamilton County Superior Court, State of Indiana, where it is currently pending, to the United States District Court for the Southern District of Indiana, Indianapolis Division. This Notice is submitted pursuant to 28 U.S.C. § 1446.

In support of his Removal, Bibas states as follows:

TIMELINESS OF REMOVAL

1. On or about July 16, 2021, Plaintiff NextGear Capital, Inc. (“NextGear”) filed a complaint against Bibas and co-defendant Privilege Auto Imports, LLC in the Hamilton County Superior Court. A copy of this Complaint is attached as **Exhibit A** to this Notice.
2. Plaintiff’s counsel attempted to serve the Complaint on Bibas by personal service. The Summons was file-stamped on July 16, 2021, but never properly served on Bibas. Bibas received a copy of the initial pleading on or around

July 29, 2021, through counsel.

3. Bibas has not answered the Complaint.

4. This Notice of Removal is timely under 28 U.S.C. § 1446(b) because fewer than thirty (30) days have passed since Bibas received “through service or otherwise ... a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.” *See* 28 U.S.C. § 1446(b).

JURISDICTIONAL BASIS FOR REMOVAL

5. Bibas seeks to remove this case to federal court based on complete diversity of citizenship between the parties pursuant to 28 U.S.C. § 1332.

6. For purposes of diversity jurisdiction, a corporation is “deemed to be a citizen of every state and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.” 28 U.S.C. § 1332(c)(1).

7. At the time the action was commenced, and all times since, Defendant Bibas was and has been a citizen of Minnesota.

8. At the time the action was commenced, and all times since, Plaintiff NextGear was and has been a citizen of Delaware and Georgia. NextGear is a Delaware corporation with a principal place of business in Atlanta, Georgia. (See **Exhibit B.**)

9. As there is no common citizenship between Plaintiff or Defendant, there is complete diversity of citizenship among the parties. Bibas is therefore entitled to have this cause removed from the Superior Court of Hamilton County,

Indiana to the United States District Court for the Southern District of Indiana, which is the federal district in which the state suit is pending. Therefore, the diversity requirements of 28 U.S.C. § 1332 are satisfied.

THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED

10. Pursuant to 28 U.S.C. § 1446(c)(2)(A)(i)(ii) and in accordance with Local Rule 81-1 of the United States District Court for the Southern District of Indiana, Bibas states that the Complaint seeks declaratory relief and a money judgment in excess of \$75,000, exclusive of interest and costs. Plaintiff claims breach of contract and conversion for which it seeks \$220,850.43. (**Exhibit A** at 5.)

11. This Court has jurisdiction over this action pursuant to the provisions of 28 U.S.C. § 1332(a), in that there exists complete diversity of citizenship and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

PAPERS FROM REMOVED ACTION

12. Copies of all process, pleadings, and orders that have been filed in the action pending in the Hamilton County Superior Court are attached as **Exhibits A** and **C**.

DEFENDANT ANSWERS AND DISCLOSURE STATEMENTS

13. Bibas will file his Answer or other response to NextGear's complaint on or before eleven (11) days of filing this Notice of Removal.

NOTICE TO PLAINTIFF

14. Bibas has served written notice of this filing on counsel for Plaintiff as required by 28 U.S.C. § 1446(d).

NOTICE TO STATE COURT

15. After filing this Notice of Removal, Bibas will transmit a copy of this Notice of Removal to the Clerk of the Hamilton County Superior Court as required by 28 U.S.C. § 1446(d). A copy of the Notice that will be filed with the Clerk of the Hamilton County Superior Court, Indiana is attached as **Exhibit D**.

NON-WAIVER OF DEFENSES

16. By removing this action from the Hamilton County Superior Court, Bibas does not waive any defenses available to it or admit any of the allegations in NextGear's Complaint.

WHEREFORE, Mohamed Ahmed Bibas prays that the above-described cause of action pending in the Hamilton County Superior Court be removed therefrom to the United States District Court for the Southern District of Indiana, Indianapolis Division, and that this cause proceed in this court as an action properly removed thereto.

Respectfully submitted,

/s/ Colin E. Connor

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served on all counsel of record by the Court's electronic filing system on August 27, 2021.

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/s/ Colin E. Connor